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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,843	10/17/2003	Sherwin Shang	DI-5855 US	9443
29200 7590 04/19/2007 BAXTER HEALTHCARE CORPORATION 1 BAXTER PARKWAY DF2-2E DEERFIELD, IL 60015			EXAMINER PATTERSON, MARC A	
			ART UNIT 1772	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/19/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/688,843

Applicant(s)

SHANG ET AL.

Examiner

Marc A. Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

NEW REJECTIONS

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 – 6 and 12 – 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Shang et al (U.S. Patent Publication No. 2002/0115795).

With regard to Claims 1 – 2 and 14, Shang et al disclose a monolayer film (paragraph 0038) comprising a blend of a first component of an ethylene – lower alkyl acrylate interpolymers (paragraph 0038) present in an amount of 50% by weight of the film (paragraph 0024) and a second component of a propylene containing polymer (paragraph 0039) present in an amount of 50% by weight of the film (paragraph 0024) and the film capable of withstanding steam sterilization at 121 degrees Celsius (therefore terminal sterilization by exposure to steam at 121 degrees Celsius for one hour; paragraph 0004) and the first and second components having melting point temperatures determined by DSC, and the second melting point temperature is higher than the first melting point temperature (paragraph 0068); a portion of the first component is crosslinked and the second component is free of crosslinking (paragraph 0024) and the film is therefore partially crosslink free.

With regard to Claims 3 and 6, the ethylene containing polymer is obtained using a single site catalyst (paragraph 0042).

With regard to Claim 4, the ethylene containing polymer is a copolymer (paragraph 0073).

With regard to Claim 5, the propylene containing polymer is a copolymer (paragraph 0076).

With regard to Claim 12, the film is prepared by extrusion (paragraph 0085); however, the claimed aspect of the film being prepared by extrusion is a method limitation, rather than a structural limitation, and is therefore given little patentable weight.

With regard to Claims 13 and 15, the blend disclosed by Shang et al has a composition which is identical to the claimed invention, as stated above, and is capable of being fabricated into a liquid filled container (medical fluid container; paragraph 0004); the claimed aspects of the container having sufficient impact strength to resist rupturing when dropped from 8 feet and being capable of being sterilized by exposure to radiation are therefore inherent to Shang et al.

With regard to Claim 16, the film is capable of forming a peel seal to form a multiple chambered container (dual chambered container; paragraph 0100).

With regard to Claim 17, the film is capable of forming a permanent seal (paragraph 0083), therefore to form a multiple chambered container.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shang et al (U.S. Patent Publication No. 2002/0115795) in view of Hamilton et al (U.S. Patent No. 5,397,842).

Shang et al discloses a container comprising a propylene containing polymer as discussed above. With regard to Claims 7 – 8, Shang et al fail to disclose a propylene container comprising a high melt strength polymer.

Hamilton et al teach a container (column 3, line 68) comprising a propylene polymer that is a high melt strength polymer (Abstract) for the purpose of obtaining a container that is resistant to sag (column 1, lines 10 – 13). One of ordinary skill in the art would therefore have recognized the advantage of providing for the high melt strength polymer of Hamilton et al in Shang et al, which comprises a container, depending on the desired resistance to sag of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a propylene container comprising a high melt strength polymer in Shang et al in order to obtain a container that is resistant to sag as taught by Hamilton et al.

5. Claims 9 – 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shang et al (U.S. Patent Publication No. 2002/0115795) in view of Cahill et al (U.S. Patent No. 6,346,308).

Shang et al disclose a polymer as discussed above. With regard to Claims 9 – 11, Shang et al fail to disclose a polymer comprising an oxygen scavenger comprising oxidizable polyether and polydiene.

Cahill et al teach a polymer comprising oxygen scavenger comprising oxidizable polyether or polydiene for the purpose of obtaining a polymer having an extended shelf life (polybutadiene; column 4, lines 18 – 36). One of ordinary skill in the art would therefore have recognized the advantage of providing for the oxygen scavenger of Cahill et al in Shang et al, which comprises a polymer, depending on the desired shelf life of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a polymer comprising an oxygen scavenger comprising oxidizable polyether and polydiene in Shang et al in order to obtain a polymer having an extended shelf life as taught by Cahill et al

ANSWERS TO APPLICANT'S ARGUMENTS

6. Applicant's arguments regarding the 35 U.S.C. 102(b) rejection of Claims 1 – 6 and 12 – 17 as being anticipated by Shang et al (U.S. Patent Publication No. 2002/0115795), 35 U.S.C. 103(a) rejection of Claims 7 – 8 as being unpatentable over Shang et al (U.S. Patent Publication No. 2002/0115795) in view of Hamilton et al (U.S. Patent No. 5,397,842) and 35 U.S.C. 103(a) rejection of Claims 9 – 11 as being unpatentable over Shang et al (U.S. Patent Publication No. 2002/0115795) in view of Cahill et al (U.S. Patent No. 6,346,308), of record in the previous

Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 8 of the remarks dated February 2, 2007 that Shang et al do not disclose a film that is crosslink free.

However, as stated above, a portion of the first component disclosed by Shang et al is crosslinked and the second component is free of crosslinking, and the film disclosed by Shang et al is therefore partially crosslink free.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marc A. Patterson 4/16/07
Marc A. Patterson, PhD.
Primary Examiner
Art Unit 1772